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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,

Plaintiff,

vs.

David Allen Harbour,

Defendant.

Case No. 2:19-cr-00898-DLR (DMF)

**NOTICE OF SUPPLEMENTAL
AUTHORITY**

On Tuesday, May 2, 2024, the Court will hear the Parties on the issue of Bail on Appeal and conduct the Restitution Hearing.

Several significant developments need to be brought to the Court's attention:

1. On April 9, 2024, the 9th Circuit filed its opinion in *United States v. Milheiser*, ___ F.4th ___, 2024 WL 1517377 (9th Cir. 2024). Heretofore, Harbour has cited numerous times to cases from outside the 9th Circuit that go to the "nature of the bargain" analysis, e.g., *United States v. Regent Office Supply Co.*, 421 F.2d 1174, 1182 (2d Cir. 1970) and *United States v. Takhalov*, 827 F.3d 1307 (11th Cir. 2016).

1 Now the 9th Circuit has its own case that adopts completely the analysis we have
 2 previously supplied to the Court.

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 4 2. On April 17, 2024 a bipartisan panel of the US Sentencing Commission voted
 5 unanimously to prevent judges from considering a defendant's acquitted conduct
 6 when determining the sentence. Although the change will not go into effect until
 7 November 1, 2024, we had long and loud protested this Court's use of acquitted
 8 conduct and, if, as is clearly expected, the 9th Circuit returns this case for, at a
 9 minimum, resentencing, both the PAIF and Carol Hill counts, which were
 10 acquitted will disappear from the sentencing calculus, which will affecting the
 11 Guidelines.
 12

13 *Milheiser* and the Sentencing Commission changes may be significant to the bail
 14 and restitution considerations and, thus, are provided to the Court as they will be argued
 15 on May 2nd.
 16

17 RESPECTFULLY SUBMITTED this 29th day of April 2024.

18 CHRISTIAN DICHTER & SLUGA, P.C.
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20 By: /s/ Stephen M. Dichter

21 Stephen M. Dichter

22 Justin R. Vanderveer

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25 **CERTIFICATE OF SERVICE**

26 I hereby certify that on April 29, 2024 I electronically transmitted the attached
 27 document to the Clerk's Office using the CM/ECF system for filing and for transmittal
 28 of Notice of Electronic Filing to the following CM/ECF registrants:

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/s/ Yvonne Canez